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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Petition for Rulemaking)
of Pacific Bell Mobile Services) Docket No. RM-8643
Regarding a Plan for Sharing)
the Costs of Microwave Relocation)

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COMMENTS OF SOUTHWESTERN BELL MOBILE SYSTEMS
IN SUPPORT OF THE PETITION FOR RULEMAKING
OF PACIFIC BELL MOBILE SERVICES

I. INTRODUCTION

Pursuant to Section 1.405 of the Commission's Rules, Southwestern Bell Mobile Systems, Inc. ("SBMS") files these comments in support of the establishment of a rulemaking regarding the sharing of microwave relocation costs. On May 5, 1995, Pacific Bell Mobile Services ("PBMS") filed a Petition for Rulemaking seeking the imposition of very specific rules regarding the sharing of microwave relocation costs.¹ Included in this Petition is a specific formula to be utilized in calculating the costs to be borne by all PCS providers which might benefit from the relocation of an existing microwave path or system.² SBMS supports the opening of a rulemaking to consider the important issues related to the cost of relocating incumbent microwave users.

¹ Petition for Rulemaking of Pacific Bell Mobile Services, May 5, 1995 (the "PBMS Petition").

² See PBMS Petition at Pages 7 through 10.

II. DISCUSSION

SBMS was the high bidder for the licenses to provide PCS services in the Tulsa, Oklahoma, Little Rock, Arkansas and Memphis, Tennessee MTAs. In anticipation of being awarded the licenses, SBMS has initiated a review of the existing microwave links contained within these systems which must be relocated to facilitate the provision of service. SBMS has determined that it cannot initiate service without relocating a number of microwave paths.

SBMS has also determined, however, that there are a number of alternative methods which can be used to minimize, if not eliminate the need to relocate all microwave paths. For example, a simple change in the receivers, antennas and filters of the existing microwave users may improve the quality of the existing path in such a way as to avoid interference. In many instances this could eliminate interference at a significantly lower cost than the replacement of a path.

A. The Commission Should Establish Rules Allowing Flexibility in Dealing With Incumbent Licensees.

While SBMS supports the establishment of a rulemaking to deal with these important issues, SBMS cannot support the PBMS filing in its entirety. The PBMS filing would impose strict financial contribution obligations on PCS licensees, which may not interfere with the incumbent licensee. In particular, PBMS appears to have simply assumed that the relocation by one PCS provider of one microwave path eliminates interference which would have been

experienced by all other PCS providers. This simply may not be true. SBMS is concerned that the utilization of a strict mathematical formula without allowing for other means of interference elimination is simply too inflexible.

There are a number of issues with which the Commission should deal in its Petition for Rulemaking. These include the following questions:

1. The Commission will need to clarify and/or define the concept of interference. It is ironic that this fundamental concept is the subject of controversy, but that is the case. If the definition of interference is unclear and it is the existence or non-existence of interference which creates the obligation to negotiate and/or relocate, then the opportunity for a stalemate becomes quite obvious.

For example, a number of commentors in the Commission's docket considering the rewrite of Part 1 of the Commission's Rules discussed a number of different issues relating to the definition of the term interference³. In its comments, the TIA-NSMA notes that Section 101.105 of the Commission's proposed rules needs to be revised to reflect: ". . . (i) analog interference noise levels must be capable of being relaxed; (ii) the "practical threshold" for interference under Section 101.105(b) must be defined; and

³ In the Matter of Reorganization and Revision of Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Service. 94-148. (Released December 28, 1994.), the "Part 21 Rewrite."

(iii) interference resolution dispute mechanisms must be prescribed." TIA/NSMA, Comments in the Part 21 Rewrite at p. 22.

Even the resolution of these issues, however, does not provide the final answer on interference. The industry is also finding that there are other mechanisms by which multiple paths actually create a cumulative effect that results in interference. This is commonly referred to as "multiple exposure" situations. This occurs when low level interference into a microwave system occurs for more than one PCS system. While interference from any one PCS system is minimal and by itself may not even result in the need to relocate a path, when the interference levels are accumulated, an unacceptable level of interference may result. It should be abundantly clear that, absent the definition of the term "interference", all other questions related to microwave relocation simply become a morass of potential conflicts and confusion. The Commission must resolve this fundamental issue regarding the definition of interference before other matters can be addressed.

2. PCS providers should be given the flexibility to demonstrate that interference with a relocated path could have been avoided through less expensive means. For example, the replacement of older and lesser quality receivers, antennas or filters which may be in use in the existing 2 Ghz path may avoid interference entirely. PCS providers may find that, simply by replacing a single standard antenna with dual diversity high performance antennas will eliminate interference and thereby avoid replacement of the path. SBMS has estimated that the cost of this approach

would be significantly less than the cost of replacing a microwave link. The Commission should establish a mechanism by which PCS providers can demonstrate that less expensive and less intrusive methods of dealing with interference could have been implemented. If so, subsequent PCS providers should not have to share in the cost of relocating a path.

3. PCS providers should have the ability to show that their system simply would not have interfered with the path that has been relocated. The PBMS proposal does not appear to allow for such a showing. If a subsequent PCS provider can demonstrate that the path which has been relocated would not have created interference to or been interfered with by the subsequent PCS provider, then they should not have to share in the cost of relocation.

4. PCS providers will have different time tables for building out licensed areas. The C, D, E and F licensees will not have received their licenses for a period of time after the A and B providers, and A and B providers may build out different portions of an MTA at different times. The Commission should establish a time period after which sharing of relocation costs would not be required. SBMS suggests that a PCS provider which can demonstrate that its system could not have interfered with a path because it was not constructed or operational in a particular area for five years after the relocation should not be required to share in the relocation costs. This time factor could be taken into consideration in any mathematical formula that may be adopted by placing a maximum value on the number of months which can be

included in the formula. For example, in the proposed PBMS formula, T_n equals the number of months in which the PCS provider would have caused interference with the link.⁴ The Commission should place an outer limit on the number of months of interference which the first licensee should have available for compensation. If the initial PCS provider which first relocates the path has done so more than five years before a subsequent PCS provider comes into the market, then the subsequent PCS provider should not have to make any contribution at all.

B. The Commission Must Establish Rules Which Make it Clear That Incumbent Licensees Are Not to Be Unjustly Enriched.

The far greater concern for PCS providers today is the implication in the incumbent microwave market that they have the opportunity to hold up all PCS providers. This is not an issue that is unique to the PCS providers which have purchased A and B bands, but extends to all PCS providers. The Commission should make it quite clear that the costs of relocation are exactly that--costs, and do not include an opportunity for the incumbent licensees to profit from their current residence in the PCS spectrum.

The Commission should establish rules which allow incumbent licensees to be made whole for the path or paths which create interference, but eliminate the ability to exhort unreasonable payments and equipment enhancements from the PCS industry. The

⁴ See PBMS Comments at Page 8.

Commission should make it clear that the PCS provider must only replace the path or paths with which the PCS provider will actually interfere. The Commission should clearly state that this obligation does not extend to the replacement of an entire microwave system, which may be regional and multi-state in nature, when the PCS provider would only interfere with one, two or very few of the actual paths.

In addition, the Commission should establish performance standards or rules to gauge the performance standards of the incumbent licensee. For example, if the incumbent licensee is using fully depreciated, outdated equipment (which may be utilized only as a back-up), the PCS providers should have an obligation only to duplicate the current quality or level of service. While the natural effect of the replacement of older and outmoded equipment will likely be to enhance the performance of the path simply by the implementation of newer antennas and technologies, this enhancement should be a byproduct of the replacement of old equipment with new and not be a demand which can be placed on the PCS providers by incumbent licensees.

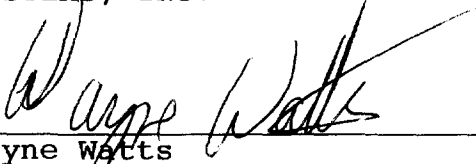
III. CONCLUSION

SBMS supports the establishment of a rulemaking to consider the important issues of microwave relocation. While PBMS proposes a formula which may be of some value in establishing the method and amount of contributions among the PCS providers, the Commission should indicate clearly that this formula is not the sole basis for

determining contributions. The Commission should establish rules which allow PCS providers to show that their system would not have interfered or could have avoided interference at a much lower cost. This lower cost should be the maximum amount of contribution to be paid by subsequent PCS providers.

Respectfully submitted,

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